



600 MASSACHUSETTS AVE., NW WASHINGTON, DC 20001
T 202.344.4000 F 202.344.8300 www.Venable.com

George Kostolampros

T 202.344.4426

F 202.344.8300

gkostolampros@venable.com

July 21, 2021

VIA ECF

The Honorable Joseph F. Bianco
Visiting Circuit Judge (sitting by designation in below referenced matter)
U.S. Court of Appeals for the Second Circuit
100 Federal Plaza
Central Islip, New York 11722

Re: **United States of America v. Kenner, Cr. No. 13-607 (JFB)**

Dear Judge Bianco,

We write in advance of the status hearing regarding forfeiture in the above-referenced scheduled for July 22, 2021 to provide the Court with an update on outstanding matters related to forfeiture.

First, as to the Government's discovery requests which Danske and the government agreed to in our meet and confers, Danske plans to make a production on or before August 2, 2021 and, to the extent there are any remaining documents to produce, Danske will complete production by August 9, 2021:

- Request No. 2 -- 10 Delvin reports, 10 sample draw packages, and 10 funding memoranda related to the identified sample draw packages. *See* ECF No. 1065-1 at 1.
- Request Nos. 13 and 16 -- updated calculation of interest, including recent loan statements for Facilities A, B, and C.
- Request No. 10 as to diligence summaries (to the extent there are any additional documents that have not already been produced);
- Request Nos. 5, 7, 15, 17, 18, 19, and 21 -- a written statement or explanation as agreed to in meet and confers.

Additionally, we are conferring with the government regarding a deposition date for Mr. Michael Delvin for potentially late September 2021.



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Second, during the June 7, 2021 conference, the Court questioned the relevance of Danske's document requests. We respectfully reiterate our request for documents from the government and those requests are attached hereto as Exhibit 1. The government has made available to the Court documents relevant to Danske's Request No. 6 (ancillary petitions or forfeiture claims by other parties who did not file those claims directly with the Court). The remaining Danske requests are not only relevant to Danske's equitable estoppel argument but also relevant to understanding the bases for the government's claims that Danske had some arrangement with the borrower/developer to deplete equity via modified loan agreements. At the very least, Danske's request No. 5 for documents and communications relating to the value of the Resort Property, including appraisals, is direct evidence regarding the value of the Resort Property and that the amounts Danske loaned enhanced the Resort Property's value. Specifically, it is our understanding based on the government's representation that the government's appraisal valued the Resort Property above Danske's loan. This alone is evidence showing that Danske's millions of dollars in additional loans did not deplete equity value.

The other requests also go to defending against the government's inaccurate claims regarding Danske's additional lending. In its June 2, 2021 letter to the Court, the government stated that "the bases for the government's assertion that Danske did not engage in arm's length transactions is derived from Danske's own records, or lack thereof." Government letter at 7. To the extent the Court does not allow these additional discovery requests, the government should be limited to using only documents produced by Danske since the beginning of this ancillary proceeding in any supplemental submission the government submits challenging Danske's claim.

Third, as to the potential note sale, Danske continues to negotiate with Silver Peak regarding a potential Note Sale Agreement. As we have explained to the Court before, Danske would agree to remain subject to this Court's jurisdiction to the extent a resolution was not agreed to between Silver Peak and the government. Thus, there would be no prejudice to the government.

Fourth and finally, we understand that the government and Silver Peak have had conversations regarding a potential settlement if Silver Peak were to purchase Danske's note and the Court recognized Silver Peak as Danske's assignee standing in Danske's position. Danske, however, has not been involved in those discussions.

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We thank the Court for its time and attention to this matter.

Respectfully,

/s/ George Kostolampros

George Kostolampros
Doreen S. Martin
Xochitl S. Strohbehn

cc: All parties of record via ECF